



109887

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II**

IN THE MATTER OF
THE CHEMICAL CONTROL SITE

RADIAC RESEARCH CORPORATION,

Respondent

Proceeding Under Sections 107(a),
122(h), and 122(i) of the
Comprehensive Environmental
Response, Compensation, and
Liability Act, as amended,
42 U.S.C. Sections 9607(a),
9622(h), and 9622(i).

ADMINISTRATIVE ORDER
ON CONSENT

Index No. II CERCLA-94-0112

I. INTRODUCTION

1. This ADMINISTRATIVE ORDER ON CONSENT ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Radiac Research Corporation ("Radiac" or "Respondent"). This Order provides for reimbursement of certain response costs incurred by EPA prior to the effective date of this Order for actions taken relating to the Chemical Control Superfund Site, City of Elizabeth, County of Union, New Jersey ("Site").

II. JURISDICTION

2. This Order is issued under the authority vested in the President of the United States by Sections 107(a), 122(h), and 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. Sections 9607(a), 9622(h), and 9622(i). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Federal Register 2923 (1987), and further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-D.

3. Respondent agrees to make all payments required by the terms and conditions of this Order. Respondent agrees not to contest the authority or jurisdiction of the Regional

Administrator to issue or enforce this Order, and agrees not to contest the basis or validity of this Order or any of its terms.

III. PARTIES BOUND

4. This Order shall apply to and be binding upon Respondent, its agents, officers, heirs, successors, and assigns. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent to this Order. Any change in the ownership or corporate status of the Respondent or of the Site shall not alter Respondent's obligations under this Order.

5. Respondent shall provide a copy of this Order to any prospective or subsequent owners or successors before Respondent's property rights, stock, or assets are transferred. Respondent shall be responsible for any noncompliance with this Order.

IV. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. As used in this Order, unless the context clearly requires some other meaning, the following terms shall have the following meanings:

- a. CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq.
- b. Day shall mean calendar day.
- c. EPA shall mean the United States Environmental Protection Agency.
- d. Hazardous substance shall mean that term as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
- e. Natural Resources shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. §9601(16).
- f. Natural Resource Damages shall mean damages, including costs of damage for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from release of hazardous substances for any and all natural resources at the Site.

- g. NCP shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, at 40 C.F.R. Part 300, and all amendments or modifications thereto.
- h. NJDEPE shall mean the New Jersey Department of Environmental Protection and Energy, an agency of the State of New Jersey, which was known formerly as the New Jersey Department of Environmental Protection.
- i. Response Costs shall mean all costs incurred by EPA for response activity associated with the gas cylinders and overpacks at the Chemical Control Superfund Site prior to the effective date of this Order and all interest on all such costs.
- j. Respondent shall mean the Radiac Research Corporation located at 261 Kent Avenue, Brooklyn, New York, 11211, and includes its officers, agents, assigns and successors.
- k. Site shall mean the real property and all structures located at and all groundwater located under the Chemical Control Superfund Site located at 23 Front Street, City of Elizabeth, Union County, New Jersey, and the aerial extent of contamination to which hazardous substances from the property were transported, have or may have migrated or otherwise threatened to migrate.

V. FINDINGS OF FACT

7. The Chemical Control Superfund Site consists of an approximately two and two-tenths (2.2) acre parcel of real property located at 23 Front Street in the City of Elizabeth, Union County, New Jersey, and a portion of the adjacent Elizabeth River. The surrounding area is mainly industrialized. Approximately one hundred thousand (100,000) people live within a three mile radius of the Site.

8. The Site is a former hazardous waste treatment and disposal facility owned and operated by the Chemical Control Corporation from 1970 until closure in 1979 by the NJDEPE. In 1979, Chemical Control Corporation was placed in operational receivership by the Superior Court of New Jersey for violation of state environmental regulations.

9. The Chemical Control facility accepted a wide variety of hazardous substances during its operation. These hazardous substances included but were not limited to such substances as:

benzene, toluene, PCBs, cadmium, propane, ethane, aluminum alkyl halides, butane, hydrogen sulfide, arsenic and DDT. At the time of closure in 1979, there were approximately fifty thousand (50,000) fifty-five (55) gallon drums and approximately 290 gas cylinders of varying sizes stored at the Site.

10. In 1979, the NJDEPE commenced an environmental remediation program designed to address the approximately fifty thousand (50,000) fifty-five (55) gallon drums accumulated at the Site.

11. In 1980, prior to the completion of the NJDEPE's remediation program, a major explosion and fire destroyed all structures and contributed to the release of hazardous substances, pollutants and contaminants at the Site and into the Elizabeth River.

12. After the explosion and fire in 1980, most of the chemicals were either removed, thermally destroyed, released into the air via a contaminant plume, leached into the soil and groundwater, or migrated as surface runoff into the Elizabeth River.

13. In response to the fire, the United States Coast Guard performed fire fighting activities and, pursuant to Section 311(k) of the Clean Water Act, 33 U.S.C. § 1321(k), reimbursed the State of New Jersey for their costs incurred while conducting the initial post-fire response action. These response actions included NJDEPE oversight of the removal of 101 gas cylinders from the Site by two responsible parties. This left approximately 189 gas cylinders remaining at the Site.

14. The United States Environmental Protection Agency (EPA) performed various environmental response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, including a removal action to remediate the remaining gas cylinders. In August of 1984, EPA recontainerized and overpacked 182 of the 189 cylinders in order to stabilize the contents of the cylinders, to contain potential releases, and to prevent further deterioration of the cylinders until final disposal of the cylinders could be arranged.

15. On January 12, 1989, the Regional Administrator of EPA signed an Action Memorandum authorizing the expenditure of funds for the disposal of the cylinders and overpacks. The Action Memorandum detailed a four phase approach for the disposal by utilizing a recontainerization process. The four phases were as follows:

- a. Mobilization and site preparation.

- b. Sampling and on-site treatment in a Cylinder Recovery Vessel of both the contents of the overpacks and the cylinders.
- c. Off-site disposal.
- d. Demobilization activities.

16. Between March 21, 1989, and February 20, 1990, EPA conducted the removal activity addressed in the January 12, 1989, Action Memorandum and disposed of the remaining cylinders and overpacks off-site.

17. Many of the chemicals which were detected in the cylinders and overpacks at the Site are hazardous substances within the meaning Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

18. On April 7, 1992, Radiac Research Corporation, Respondent, sent a response to a request for information letter of March 26, 1992, to EPA. The response contained information that Radiac had shipped four cylinders to the Chemical Control Site.

19. Radiac's records indicate that the cylinders sent to the Site contained hazardous substances.

20. Hazardous substances similar to those sent to the Site by Radiac were found in cylinders and/or overpacks located at the Site.

21. On August 18, 1987, a Notice of Potential Responsibility was sent to the Respondent which provided Respondent with the opportunity to undertake and/or finance response activities at the Site.

22. EPA has incurred approximately \$1.86 million in costs for response activity associated with the cylinders and overpacks at the Chemical Control Superfund Site.

23. On January 8, 1993, EPA sent a demand letter to Radiac for the approximate \$1.86 million for costs incurred by EPA for the cylinder response activities at the site.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

24. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).

25. Chemicals found in the cylinders and overpacks located at the Site and identified in the FINDINGS OF FACT above, are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14), or constitute a "pollutant or

contaminant" that presented an imminent and substantial danger to public health, welfare or the environment under Section 104(a)(1) and 106(a) of CERCLA, 42 U.S.C. Section 9604(a)(1) and 9606(a).

26. The presence of hazardous substances at the Site, and the presence, migration and potential migration of hazardous substances located at the Site, constituted actual and/or threatened "releases" into the "environment" as defined in Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

27. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

28. Respondent is a responsible party under Sections 104, 107 and 122 of CERCLA, 42 U.S.C. Sections 9604, 9607 and 9622.

29. The actions taken by EPA in response to the release and/or threatened release of hazardous substances from the Site were necessary to protect the public health, welfare or the environment, were in the public interest, and were consistent with CERCLA and the NCP.

VII. NOTICE, APPROVAL AND PUBLIC COMMENT

30. EPA has notified the State of New Jersey that this Order is being issued by providing a copy of this Order to NJDEPE. Issuance of this Order has received the prior written approval of the Attorney General of the United States, as required by Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622 (h)(1). Pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622 (i), notice of this Order shall be published in the Federal Register for a period of thirty (30) days for public comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Order disclose facts or considerations which indicate that this Order is inappropriate, improper, or inadequate. The parties understand and agree that final issuance and execution of this Order by the Regional Administrator is subject to the public notice and comment procedures set forth in Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i).

VIII. REIMBURSEMENT OF COSTS

31. Within fifteen (15) calendar days of the effective date of this Order, Respondent shall remit a certified or cashier's check to EPA in the amount of \$40,000 in reimbursement of certain past response costs, including direct and indirect costs and enforcement costs, incurred by the United States in conducting certain response activity with respect to the Site.

32. Checks remitted pursuant to this Order shall be made payable to the "Hazardous Substance Superfund" and shall include the name of the Site, the Site Identification number (02-55), the Regional Lock Box Number 360188M, and the title and index number of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency, Region II
Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251.

33. Copies of the transmittal letter and check shall be sent simultaneously to the On-Scene Coordinator, the Remedial Project Manager, and the Assistant Regional Counsel, for the Site at the addresses specified below.

Removal Action Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
2890 Woodbridge Avenue
Building 209
Edison, New Jersey 08837
Attn: Mark Pane, On-Scene Coordinator for the Chemical
Control Superfund Site

New Jersey Superfund Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
26 Federal Plaza
New York, New York 10278
Attn: Nigel Robinson, Chemical Control Superfund Site
Project Manager

Office of Regional Counsel
New Jersey Superfund Branch
United States Environmental Protection Agency, Region 2
26 Federal Plaza
New York, New York 10278
Attn: Kristine Leopold, Assistant Regional Counsel for
the Chemical Control Superfund Site

IX. INTEREST AND PENALTIES FOR LATE PAYMENT

34. If Respondent fails to make any payments required under this Order by the dates specified herein, Respondent shall pay to the United States, remitted as provided in Section VIII. Reimbursement of Costs, above, within thirty (30) calendar days of the date any such late payment is due, and by the end of each 30-day late period thereafter, the following amounts:

- a. interest on the unpaid balance at the rate established by the Department of the Treasury pursuant to 31 U.S.C. Section 3717 and 4 C.F.R. Section 102.13;
- b. a handling charge of one (1) percent, to be assessed at the end of each thirty-day late period; and
- c. a penalty at the rate of six (6) percent per annum on the unpaid balance if Respondent has not paid in full within ninety (90) days after payment is due. This penalty charge shall be paid at the end of each 30-day late period following the initial 90-day period, but shall accrue from the date payment is due.

35. This Section does not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of Respondent's failure to comply with this Order. Payment of penalties or interest under this Section shall not alter Respondent's obligation to comply with this Order.

X. RELEASE OF LIABILITY

36. Upon receipt by EPA of the payment required by Section VIII. Reimbursement of Costs, above, and any amounts due under Section X. Interest and Penalties for Late Payment, above, for late payments, Respondent shall have resolved its liability to EPA for Response Costs for the cylinder removal activity at the Site.

XII. CONTRIBUTION PROTECTION

37. With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions of claims to the extent provided by section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4). Nothing in this order precludes Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XII. RESERVATIONS OF RIGHTS

38. Respondent is not released from liability, if any, for any response actions or response costs beyond the scope of this Order, including but not limited to other removal or remedial activities, activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or response actions undertaken or

response costs incurred by EPA after the effective date of this Order.

39. The United States, on behalf of EPA, reserves the right to bring an action for damages for injury to, destruction of, or loss of natural resources, including the costs of assessing such injury, destruction or loss resulting from release of hazardous substances at the Site for damages to natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6).

40. The United States, on behalf of EPA, reserves the right to bring an action against Respondent under Section 107 of CERCLA for recovery of all response costs incurred by EPA and/or the United States relating to the Site for other response activities which are not paid by the Respondent pursuant to this Order and which is not already covered under United States v. Advanced Environmental Technologies Corp., et al., No. 90-3793 (AJL) (D.N.J.) and United States v. A.T. & T. Technologies, Inc., et al., No. 90-3789 (AJL) (D.N.J.) (consolidated cases).

41. EPA reserves the right to bring an action against Respondent to enforce the obligation to pay Response Costs, to collect any interest and late-payment penalty amounts due under Section X. Interest and Penalties for Late Payment, above, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. Section 9609 for any and all violations of this Order.

42. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Except as expressly provided in this Order, nothing in this Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek recovery of response costs, injunctive relief, statutory penalties, or punitive damages.

XII. DISCLAIMER

43. By signing this Order and making payments required under this Order, Respondent does not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of Respondent in this Order shall not be considered an admission of liability, and this Order shall not be admissible as evidence of liability in any judicial or administrative proceeding other than a proceeding by the United States or EPA to enforce this Order, or a judgment relating to it. Respondent retains its right to assert claims against other responsible parties at the Site.

XIII. OTHER CLAIMS

44. In entering into this Order, Respondent waives any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9606, for any payments made pursuant to Section VIII. Reimbursement of Costs, of this Order. Respondent also waives any right to present a claim under Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 and 9612, for any payments made pursuant to Section VIII. Reimbursement of Costs of this Order. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondent further waives all other statutory and common law claims against EPA, including, but not limited to, contribution and counterclaims, relating to or arising out of Respondent's performance of its obligations under Section VIII. Reimbursement of Costs, of this Order.

45. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

XIV. EFFECTIVE DATE AND MODIFICATION

46. The effective date of this Order shall be the date it is signed by the Acting Regional Administrator. EPA will make all reasonable efforts to notify Respondent in a timely manner of the date of signing of this Order.

47. This Order may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be signed by Respondent and the Regional Administrator and shall be effective when signed by the Regional Administrator.

48. No informal advice, guidance, suggestions, or comments will be construed as relieving Respondent of its obligations under this Order.

XV. TERMINATION

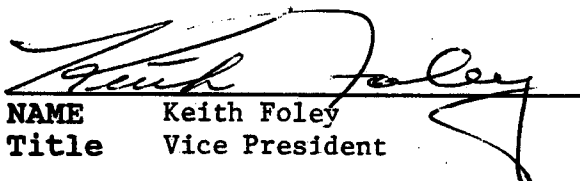
49. This Order shall terminate when Respondent has made and EPA has received all payments required under Section VIII. Reimbursement of Costs, above, and EPA provides written notice, signed by the Chief, New Jersey Compliance Branch, Emergency and Remedial Response Division, to Respondents of such termination.

CONSENT:

RADIAC RESEARCH CORPORATION

by the duly authorized representative named, titled and signed hereunder, hereby consents to this order and agrees to be bound by the terms and conditions thereof:

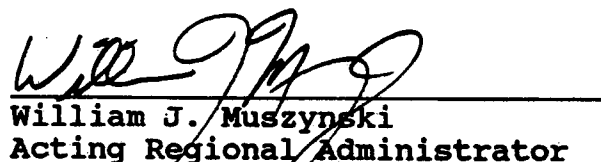
BY:


NAME Keith Foley
Title Vice President

Date: February 22, 1994

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:


William J. Muszynski
Acting Regional Administrator

Date: 2/16/95, 1994

TOLLING AGREEMENT

This Agreement ("Supplemental Tolling Agreement") is entered into between: (1) the United States of America on behalf of the U.S. Environmental Protection Agency (the "United States") and (2) Radiac Research Corporation ("Potential Settlor").

The undersigned representative of Potential Settlor certifies that he or she is fully authorized to enter into the terms and conditions of this Supplemental Tolling Agreement and to execute and bind such party to this document.

WHEREAS, the parties to this Supplemental Tolling Agreement desire to eliminate the need for or to defer any litigation or claims against the undersigned parties, without thereby altering the claims or defenses available to the parties, except as specifically provided herein;

NOW THEREFORE, the United States and Potential Settlor, in consideration of the mutual covenants set out herein, stipulate and agree as follows:

1. The United States contends that it has causes of action against Potential Settlor pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9607, in connection with the incurrence of costs by the United States regarding the

1
Chemical Control Superfund Site (the "Site"), located at 23 Front Street in the City of Elizabeth, Union County, New Jersey. The United States contends that its cause of action pursuant to CERCLA against Potential Settlor relating to the Site include claims for the reimbursement of the approximately \$1,858,853.80 in response costs expended by the U.S. Environmental Protection Agency ("EPA") relating to the remediation of 189 gas cylinders and 182 gas cylinder overpacks at the Site.

2. This Supplemental Tolling Agreement does not constitute nor shall it be construed to constitute in any way any admission of liability on the part of Potential Settlor.

3. This Supplemental Tolling Agreement does not constitute any admission or acknowledgement on the part of either signing party as to any applicable statute of limitations under the above-cited statute or that any statute of limitations at all applies.

4. Potential Settlor agrees that the time between February 20, 1994 and August 20, 1994, will not be included in computing the time limited by any statute of limitations for the alleged causes of action referred to in Paragraph 1, if any statute of limitations is applicable. Nor will that time period be considered on a defense of laches or similar defense concerning timeliness of commencing a civil action. Potential Settlor shall

not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense or avoidance to an otherwise timely claim based on the running of any statute of limitations, during the aforementioned period, and any statute of limitations shall be tolled during and for that period. Potential Settlor further agrees not to assert the tolling period as part of any laches defense concerning the timeliness of commencing a civil action concerning the causes of action referred to in Paragraph 1.

5. The United States agrees not to institute the alleged causes of action described in Paragraph 1 of this Supplemental Tolling Agreement against Potential Settlor prior to May 20, 1994.

6. Except as provided in Paragraph 5 of this Supplemental Tolling Agreement, the United States reserves all of its rights under CERCLA §107 against Potential Settlor.

7. The United States reserves all of its rights under CERCLA §107 against all persons other than Potential Settlor.

8. Potential Settlor reserves all rights and defenses which it may have, except as set forth in this Supplemental Tolling

Agreement, to contest or defend any claim or action the United States may assert or initiate against it.

9. This Supplemental Tolling Agreement supplements the Tolling Agreement entered into by Potential Settlor and the United States on February 16, 1993, and it contains the entire supplemental agreement between the parties; and this contract may not be enlarged, modified or altered except in writing signed by the parties and endorsed herein.

FOR THE UNITED STATES:
JOHN C. CRUDEN
Environmental Enforcement
Section
Environment & Natural Resources
Division
U.S. Department of Justice

FOR RADIAC RESEARCH CORPORATION:
By: _____
Dated: _____

BY: TIMOTHY K. WEBSTER
Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Date: _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

JACOB K. JAVITS FEDERAL BUILDING

NEW YORK, NEW YORK 10278-0012

VIA EXPRESS MAIL

February 3, 1994

Ms. Lila Wynne Williams
Slimm, Dash & Goldberg
P.O. Box 2222
216 Haddon Avenue
Westmont, New Jersey 08108-2886

Re: The Chemical Control Superfund Site

Dear Ms. Williams,

Enclosed please find a copy of the Administrative Order on Consent for settlement, subject to concurrence by the Regional Administrator and the United States Department of Justice, of response costs incurred by the United States for response activity associated with the cylinders and overpacks at the Chemical Control Superfund Site.

Also, pursuant to our conversation on February 2, 1994, enclosed is a copy of a Supplemental Tolling Agreement. Please forward the signed copy of the Supplemental Tolling Agreement to Mr. Timothy K. Webster at the:

United States Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044.

Please contact me at (212)264-6159 if you have any questions.
Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kristine M. Leopold".

Kristine M. Leopold
Assistant Regional Counsel

cc: Timothy K. Webster

Enclosures